

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
TracFone Wireless, Inc.	)	CC Docket No. 96-45
	)	
Petition for Modification of Condition Imposed on	)	
TracFone upon Designation as an Eligible	)	
Telecommunications Carrier	)	
	)	

**PETITION FOR RECONSIDERATION**

TracFone Wireless, Inc. (“TracFone”), pursuant to Section 1.106 of the Commission’s Rules (47 C.F.R. § 1.106), requests that the Wireline Competition Bureau (“Bureau”) reconsider its Order issued January 11, 2011, in which it denied a petition filed by TracFone.<sup>1</sup> In its petition, TracFone requested modification of the condition that TracFone, as an Eligible Telecommunications Carrier (“ETC”), require each of its customers to self-certify at time of service activation and annually thereafter that the customer is the head of household and receives

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<sup>1</sup> In the Matter of TracFone Wireless, Inc. Petition for Modification of Condition Imposed on TracFone Upon Designation as an Eligible Telecommunications Carrier, CC Docket No. 96-45, DA 11-54 (released: January 11, 2011) (“Denial Order”). The Denial Order incorrectly characterizes TracFone’s petition as a “petition for waiver.” (Denial Order, ¶ 1). TracFone’s petition did not request waiver of any Commission rule or, for that matter, any Commission-imposed condition. Rather, it requested **modification** of a Commission forbearance condition so as to allow TracFone to verify annually that its Lifeline customers remain head of household and only receive Lifeline service from TracFone using verification methodologies required of other ETCs (including ETCs which offer Lifeline services similar to those of TracFone) in connection with their annual verifications of Lifeline customers’ continuing Lifeline eligibility.

Lifeline-supported service only from TracFone.<sup>2</sup> The Bureau found that TracFone had not demonstrated good cause and that a modification is not in the public interest. However, the Bureau's conclusion is based on an erroneous rationale, and accordingly, should be reconsidered.

On April 27, 2009, TracFone filed a petition for modification in which it requested that the forbearance verification condition imposed on it in the TracFone Forbearance Order be modified to allow TracFone to verify annually that its Lifeline customers are heads of household and receive Lifeline-supported service only from TracFone through use of a statistically-valid sample of those customers. The forbearance verification requirement as set forth in the TracFone Forbearance Order, at paragraph 18 provides:

We further safeguard the fund by imposing additional conditions on this grant of forbearance. Specifically, as a further condition of this grant of forbearance and in addition to all other required certifications under the program, we require that TracFone require its Lifeline customers to self-certify under penalty of perjury upon service activation and then annually thereafter that they are the head of household and only receive Lifeline-supported service from TracFone. ... In light of these safeguards, we are not dissuaded from granting forbearance by concerns of double recovery relating to customers receiving Lifeline support for more than one service. We recognize, however, that the potential for more than one Lifeline-supported service per eligible consumer is an industry-wide problem. We are confident that these conditions of this grant of forbearance will eliminate this concern with respect to TracFone's customers.

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<sup>2</sup> This condition was first imposed in the 2005 order conditionally granting TracFone's petition for forbearance from the statutory requirement that it provide Universal Service Fund-supported services using its own facilities or a combination of its own facilities and resale of other carriers' services. Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 USC § 214(e)(1)(A) and 47 CFR § 54.201(i), 20 FCC Rcd 15095, ¶ 18 (2005) ("TracFone Forbearance Order"). The condition imposed as part of the Commission's grant of forbearance was re-affirmed in the 2008 order designating TracFone as an ETC in certain jurisdictions. Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, et al., 23 FCC Rcd 6206, ¶ 21 (2008). This verification condition is in addition to the Commission regulation codified at 47 C.F.R. 54.410(c) that all ETCs verify annually that their Lifeline customers remain eligible for Lifeline support. For purposes of this Petition, the forbearance condition at issue is referred to as "forbearance verification."

(footnotes omitted). As explained in the TracFone Forbearance Order, the Commission imposed the forbearance verification requirement on TracFone to eliminate a concern that an eligible consumer may attempt to receive more than one Lifeline-supported service (i.e., engage in so-called “double-dipping”). The forbearance verification requirement was imposed on TracFone as a condition for the Commission’s grant of TracFone’s request for forbearance of the statutory facilities-based requirement for ETCs.<sup>3</sup> Thus, it was imposed on TracFone due to its status as a reseller; not based on the manner in which it would provide Lifeline service. On June 1, 2009, TracFone filed a supplement to its petition in which it advised the Commission that due to its customers’ poor history of responding to requests for information, a requirement that TracFone obtain an annual forbearance verification from every customer would result in a large percentage of its customers being de-enrolled from Lifeline.

At no time has TracFone questioned the need for sound and reasonable procedures to detect and prevent enrollment by Lifeline customers in multiple Lifeline programs, nor has TracFone sought to be relieved of the responsibility to verify that customers are only enrolled in its Lifeline program. Neither has TracFone requested waiver of any Commission rule. Rather, TracFone only sought modification of the forbearance verification condition so as to allow it to verify annually that its Lifeline customers remain head of household and only receive Lifeline service from TracFone based on surveying a statistically-valid random sample of its customers.<sup>4</sup> Grant of its modification petition would have imposed on TracFone a forbearance verification sampling requirement comparable to that imposed on all other ETCs -- wireline and wireless,

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<sup>3</sup> See 47 U.S.C. § 214(e)(1)(A).

<sup>4</sup> Because TracFone only has sought modification of a condition of forbearance -- a condition which, though modified, would remain applicable, the Bureau’s references to and reliance upon Commission waiver jurisprudence (Denial Order, ¶ 4 nn. 15-17) is inappropriate and misplaced.

post-paid and prepaid.<sup>5</sup> Although the sampling requirement would be modified to allow for statistically-valid random sampling, the forbearance verification condition that TracFone verify annually that its Lifeline customers receive Lifeline service only from TracFone would remain in effect and would not be waived.

In the Denial Order, the Bureau states that the “condition imposed on TracFone and similarly-situated ETCs is essential to protecting the program from waste.”<sup>6</sup> The Bureau then provides the following justification for its decision that annual verification from each Lifeline customer as to whether TracFone is the sole Lifeline provider to the customer’s household helps to guard against waste:

TracFone and other similarly-situated ETCs typically provide their Lifeline-supported service for free and do not invoice their Lifeline consumers. We believe this may increase the risk for more duplicate claims for Lifeline-supported service than is likely with traditional ETCs which bill their customers monthly. First, some enrolled low-income consumers of pre-paid wireless service may not understand that their service is supported by the Lifeline program because, lacking a monthly bill, they do not see a Lifeline discount noted on a bill. Second, some consumers may understand that TracFone and similarly-situated carriers are offering Lifeline-supported service, but these consumers may still sign up for a second Lifeline-supported phone through a pre-paid wireless carrier because of the free nature of the service. In fact, as noted above, the Commission imposed additional requirements on carriers such as TracFone because of concerns with double recovery of Lifeline support by consumers.<sup>7</sup>

The problem underlying the Bureau’s analysis in the Denial Order is its reliance on the concept of “similarly situated ETCs.” Specifically, the Bureau relies on the free nature of TracFone’s Lifeline service as the reason for denying TracFone’s petition for modification of the

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<sup>5</sup> Section 54.410(c)(2) of the Commission’s rules (47 C.F.R. § 54.410(c)(2)) states, in relevant part, that “... eligible telecommunications carriers in states that do not mandate state Lifeline support must implement procedures to verify the continued eligibility of a *statistically valid random sample* of their Lifeline subscribers.” (emphasis added).

<sup>6</sup> Denial Order, ¶ 5.

<sup>7</sup> Id.

forbearance verification condition. The Bureau's reliance on the facts that TracFone offers free Lifeline service to its customers and that TracFone does not issue bills to its customers as the bases for maintaining the forbearance verification requirement first articulated in the TracFone Forbearance Order, without modification, is misplaced and erroneous and warrants reconsideration. The Commission imposed the forbearance verification condition on TracFone as part of a forbearance proceeding based upon TracFone's status as a reseller -- not based on the fact that its Lifeline service was to be a free service rather than a discounted billed service. The Commission did not consider the terms of TracFone's Lifeline service nor did it consider TracFone's pre-paid business model. Indeed, the Commission has imposed the identical condition on other wireless resellers in granting their petitions for forbearance of the facilities-based requirement for ETCs.<sup>8</sup> The Commission's basis for requiring resellers subject to forbearance to obtain annual verifications from each of their subscribers was solely to prevent waste of Universal Service Fund resources due to customers receiving Lifeline service from more than one ETC. Whether the resellers' proposed Lifeline services would be offered as free services or as discounted billed services was not considered.

Importantly, other ETCs offering free, rather than discounted, Lifeline services are not subject to the forbearance verification condition despite the fact that those other ETCs' services also are free, and notwithstanding the fact that those providers are, in all relevant respects, "similarly-situated" to TracFone. For example, various ETCs claim to be facilities-based carriers premised on their use of unbundled network elements and their operation of switches in

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<sup>8</sup> See e.g., Virgin Mobile USA, L.P. Petition for Forbearance from 47 USC §214(e)(1)(A), 24 FCC Rcd 3381 (2009); Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support i-wireless, LLC Petition for Forbearance from 47 USC §214(e)(1)(A), CC Docket No. 96-45, WC Docket No. 09-197, FCC 10-117 (released June 25, 2010).

jurisdictions other than those in which they are operating as an ETC.<sup>9</sup> Indeed, one ETC applicant which proposes to offer free Lifeline service similar to TracFone, acknowledges that, like TracFone, it is a mobile virtual network operator, but claims that it is facilities-based on the assertion that it provides its own directory assistance and operator service.<sup>10</sup> While that ETC's petitions are pending, if the Commission deems that ETC applicant to be facilities-based as the ETC applicant claims to be, and does not impose on that applicant the same conditions as were imposed on TracFone in the TracFone Forbearance Order, that ETC will only be required to verify its Lifeline customers' continued eligibility based on a statistically-valid random sample. It will not be subject to the forbearance verification condition despite the fact that its free Lifeline service will be every bit as susceptible to the increased risk of duplicate claims as TracFone's Lifeline service. Other ETCs not subject to the forbearance verification condition currently are offering free Lifeline services. ETCs such as Nexus Communications, LinkUp Telecom,<sup>11</sup> and others are operating as ETCs in various states and are offering free Lifeline service to consumers with no obligation to verify annually that each of their Lifeline customers are not receiving Lifeline service from other ETCs.

If the Commission deems it necessary to require ETCs offering free Lifeline service to verify annually that all of their Lifeline customers are not receiving Lifeline service from other

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<sup>9</sup> Examples of such "facilities-based" ETCs are described in TracFone's petition for declaratory ruling filed December 1, 2010. See Public Notice - Wireline Competition Bureau Seeks Comment on TracFone Petition for Declaratory Ruling on Universal Service Issues, WC Docket Nos. 09-197, 03-109, DA 10-2324, released December 8, 2010.

<sup>10</sup> Public Notice - Comment Sought on GreatCall, Inc.'s Petitions for Limited Designation as an Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, New Hampshire, New York, North Carolina, Tennessee, Virginia, and the District of Columbia, WC Docket No. 09-197, DA 10-1906, released October 1, 2010. On November 1, 2010, TracFone submitted comments on GreatCall, Inc.'s ETC petitions.

<sup>11</sup> LinkUp Telecom offers the first month of Lifeline service for free.

ETCs, then it should impose such a requirement through promulgation of a rule applicable to all similarly-situated ETCs, not through selective imposition of such a requirement applicable to those ETCs who are resellers but not applicable to ETCs not deemed to be resellers, but who offer the same or similar free Lifeline services.

Moreover, the Bureau's conclusion that the free nature of TracFone's Lifeline service may cause more double-dipping is speculative and unsupported. The Bureau speculates without any factual basis that customers **may** increase the risk of duplicate claims for Lifeline support; that some consumers **may** not understand that TracFone is providing Lifeline service because there is no discount noted on a monthly bill; and that some consumers **may** understand that TracFone and similarly-situated carriers are offering Lifeline-supported service but still sign up a second Lifeline service because it is free.<sup>12</sup> However, the Denial Order offers no factual basis for these speculative views.

Indeed, TracFone has taken appropriate measures to prevent such misunderstandings and such potential duplicate enrollment. TracFone's Lifeline application forms, its communications with applicants for its Lifeline service as well as with existing Lifeline customers, and its media advertising all clearly indicate that TracFone is offering Lifeline service. There is no evidence to support the Bureau's speculative assumptions listed in the preceding paragraph.

As the Bureau is aware, duplicate enrollment or "double-dipping" is an industry-wide problem, not solely related to whether ETCs provide Lifeline service on a resale basis or through use in whole or in part of their own facilities, and not related to whether any ETC's Lifeline service is free service or discounted service. In fact, it is one of the issues that the Commission

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<sup>12</sup> Denial Order, ¶ 5.

will be examining in a Lifeline rulemaking proceeding to be commenced in the near future.<sup>13</sup> That forthcoming rulemaking will address a recent Recommended Decision from the Federal-State-Joint Board on Universal Service, which recommends, *inter alia*, that the Commission seek comment on the establishment of a national database as a means to eliminate fraudulent and duplicate claims for Lifeline support.<sup>14</sup> TracFone has long advocated development of such a database as the most efficient means to prevent waste, fraud and abuse of the Lifeline program. It continues to support that proposal. However, until such time as the Commission determines how to best address duplicate enrollment and develops rules applicable to all Lifeline providers to prevent duplicate claims for Lifeline service, the Bureau should not require only those ETCs subject to regulatory forbearance from the facilities-based service requirement, such as TracFone, to conduct annual forbearance verification of all of their customers. Rather, the Bureau should grant TracFone's request to modify the forbearance verification condition so as to allow it to conduct its forbearance verification based upon contacting a statistically-valid sample of its customers, *i.e.*, the same process which the Commission's rules require for all ETCs in performing their annual verifications of their customers' continuing eligibility for Lifeline support.

If, as the Bureau concludes, free Lifeline services "increase the risk for more duplicate claims for Lifeline-supported service than is likely with traditional ETCs which bill their

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<sup>13</sup> See Chairman Julius Genachowski Remarks on Modernizing and Streamlining the Universal Service Fund, The Information Technology and Innovation Foundation, Washington, DC, February 7, 2011 ("Next month, we will be taking on a part of USF called Lifeline-LinkUp, which helps low-income Americans get and stay connected, an important program that is in real need of reform.").

<sup>14</sup> See Federal-State Board on Universal Service; Lifeline and Link-Up (Recommended Decision), CC Docket No. 96-45, WC Docket No. 03-109, FCC 10J-3 (Nov. 4, 2010), ¶¶ 38-46.



customers monthly,”<sup>15</sup> then a verification requirement like the forbearance verification condition imposed on TracFone should also be imposed on all ETCs that offer such free Lifeline services, including facilities-based ETCs that did not request forbearance from the Commission. TracFone should not be required to continue to comply with the very burdensome forbearance verification condition for all of its customers based on the free nature of its Lifeline service when other similarly-situated ETCs offering virtually identical free services are not subject to the same requirement.

### **CONCLUSION**

Based on the foregoing, TracFone respectfully requests that the Bureau reconsider its denial of TracFone’s petition to modify the forbearance verification condition in the TracFone Forbearance Order and issue an order permitting TracFone to conduct its annual forbearance verification based upon a statistically-valid sample of its Lifeline customers that the customers are heads of household and receive Lifeline-supported service only from TracFone, rather than conduct a verification all Lifeline customers. In the alternative, TracFone requests the Bureau to subject all ETCs that offer free Lifeline service to an annual verification requirement identical to that imposed on TracFone.

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<sup>15</sup> Denial Order, at ¶ 5.

Respectfully submitted.

**TRACFONE WIRELESS, INC.**

A handwritten signature in black ink, appearing to read 'M. Brecher', is written over a horizontal line.

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